

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Implementation of Sections 309(j) and )  
337 of the Communications Act of 1934 )  
as amended )

WT Docket No. 99-87

Promotion of Spectrum Efficient )  
Technologies on Certain Part 90 )  
Frequencies )

RM-9332

Establishment of Public Service Radio )  
Pool in the Private Mobile )  
Frequencies Below 800 MHz )

RM-9405

Petition for Rule Making of the American )  
Mobile Telecommunications Association )

RM-9705

To: The Federal Communications Commission

**REPLY OF NEXTEL COMMUNICATIONS, INC.**

Nextel Communications, Inc., ("Nextel") respectfully submits these Reply Comments in the above-captioned proceeding. The Federal Communications Commission ("Commission") seeks comment on a proposed modification to the Commission's Rules which would permit assignment or conversion of existing 900 MHz Business and Industrial/Land Transportation ("B/ILT") channels for use in commercial Specialized Mobile Radio ("SMR") systems, consistent with its rule changes recently adopted for the 800 MHz band.<sup>1</sup> In initial comments in this

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<sup>1</sup> In the Matter of Implementation of Section 309(j) and 337 of the Communications Act of 1934 as Amended, *Report and Order and Further Notice of Proposed Rulemaking*, \_\_\_\_\_ FCC Rcd \_\_\_\_\_, WT Docket No. 99-87, FCC 00-403 (November 9, 2000) (the "B/ILT Order" or the "B/ILT FNPRM").

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proceeding, a majority of six commenters, including Nextel, supported the proposed rule change that would allow additional flexibility for both B/ILT licensees seeking to fulfill their communications needs and for commercial licensees seeking to acquire additional spectrum. Accordingly, Nextel respectfully requests that the Commission expeditiously adopt the proposed modification to the Commission's rules.

## **I. BACKGROUND**

In its November 9, 2000 *B/ILT Order*, the Commission amended its rules to permit B/ILT licensees to assign their 800 MHz spectrum to Commercial Mobile Radio Service ("CMRS") licensees for use in CMRS operations or to enter into joint ventures or other arrangements with commercial providers to offer commercial service.<sup>2</sup> The Commission found that permitting such transactions would create additional flexibility for both 800 MHz B/ILT licensees seeking to fill their communications needs and for CMRS licensees seeking additional spectrum.<sup>3</sup> The rule change also permits 800 MHz B/ILT licensees flexibility to modify their licenses to allow CMRS use in their own systems, allowing them the opportunity to assess marketplace and economic factors when determining the best and most efficient use of spectrum.<sup>4</sup> In that same Order, the Commission requested

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<sup>2</sup> *B/ILT Order* at paras. 109-110.

<sup>3</sup> *Id.* at para. 109.

<sup>4</sup> *Id.* at para. 111.

comment on whether it should allow the same flexibility and adopt similar rules for 900 MHz B/ILT licensees.

Comments were filed by nine parties. In addition to Nextel, the Personal Communications Industry Association, Inc. ("PCIA"), the Ad Hoc 800/900 Licensees' Committee ("Ad Hoc Committee"), Motorola, Inc. ("Motorola"), the American Mobile Telecommunications Association, Inc. ("AMTA") and DW Communications, Inc. ("DW") supported the Commission's proposed flexibility for 900 MHz B/ILT licensees. The Industrial Telecommunications Association, Inc. ("ITA"), Land Mobile Communications Council ("LMCC"), and American Petroleum Institute ("API") opposed adoption of new rules at this time, arguing that the Commission should defer action until it evaluates the effect of its rule changes at 800 MHz before adopting changes at 900 MHz.

## **II. COMMENTERS SUPPORT SIMILAR FLEXIBILITY FOR 900 MHZ B/ILT LICENSEES AS THE COMMISSION HAS ADOPTED FOR 800 MHZ LICENSEES**

Nextel, AMTA and DW agree with the Commission's conclusion that "the statutory objective of regulatory symmetry among CMRS providers"<sup>5</sup> mandates 900 MHz B/ILT licensees receive the same flexibility that the Commission has adopted for 800 MHz B/ILT licensees to engage in commercial operations or to sell their licenses to commercial providers for commercial use.<sup>6</sup>

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<sup>5</sup> *B/ILT NPRM* at para. 144.

<sup>6</sup> Nextel Comments at page 4. AMTA Comments at page 10. DW Comments at page 4.

Nextel, AMTA, DW and the Ad Hoc Committee each agrees that adopting flexibility rules for 900 MHz B/ILT licensees, will enhance spectral use, efficiency and technological developments.<sup>7</sup> With increased flexibility, 900 MHz B/ILT licensees can better assess market conditions and can promote the most efficient spectrum use.<sup>8</sup> As Nextel, AMTA and the Ad Hoc Committee point out, licensees may choose to continue to use their B/ILT spectrum for internal private communications; other may choose to offer commercial services on their spectrum – increasing commercial competition and spectrum efficiency; while others may choose to assign their spectrum to commercial providers who may value the spectrum more highly than the incumbent.<sup>9</sup> With increased flexibility, licensees will have the ability to undertake voluntary transactions that are in their economic best interests and not be subject to the regulatory restrictions adopted during this spectrum's initial allocation over fifteen years ago.<sup>10</sup>

Similar to the circumstances in the 800 MHz band, the majority of 900 MHz B/ILT spectrum is licensed in most major markets; therefore, allowing voluntary

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<sup>7</sup> Nextel Comments at page 4. AMTA Comments at page 10. DW Comments at page 5. Ad Hoc Committee at page 5.

<sup>8</sup> Nextel Comments at page 4. Ad Hoc Committee at page 5. AMTA Comments at page 11.

<sup>9</sup> Nextel Comments at page 4. AMTA Comments at page 11 and 14. Ad Hoc Committee at pages 3-4.

<sup>10</sup> Nextel Comments at page 5. AMTA Comments at page 9. Motorola Comments at 9.

transactions to occur will not reduce the available supply of B/ILT spectrum.<sup>11</sup> Similarly, Nextel, DW, Ad Hoc Committee and AMTA note that the 900 B/ILT spectrum is interleaved with commercial 900 MHz spectrum – making it particularly useful to neighboring 900 MHz commercial operators seeking additional spectrum capacity in particular markets.<sup>12</sup>

AMTA notes the Commission's recent activities in other spectrum-related proceedings, such as the Secondary Markets rule making, supports increased flexibility for B/ILT licensees at 900 MHz.<sup>13</sup> The proposed flexibility herein gives existing licensees additional options and will thereby promote economic secondary market transactions and more efficient use of the 900 MHz B/ILT spectrum.

### **III. OPPONENTS TO SPECTRUM FLEXIBILITY AT 900 MHZ PROVIDE NO REASONS TO TREAT THE 800 MHZ AND 900 MHZ BANDS DIFFERENTLY**

Contrary to API's views<sup>14</sup>, initial comments in this proceeding demonstrate that the public interest will be served by allowing voluntary flexibility for 900 MHz B/ILT licensees to make their own decisions regarding the use of the spectrum and

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<sup>11</sup> See Nextel Comments at page 5. AMTA Comments at pages 11-12. As the Commission recognizes, licensees do not typically return their valuable frequencies to the B/ILT pool so as to be available for licensing to other private users. See *B/ILT Order* at para. 112.

<sup>12</sup> Nextel Comments at page 5. DW Comments at page 3. Ad Hoc Committee at page 4. AMTA Comments at page 14. The Commission has already stated that the interleaved nature of the 800 MHz band was particularly important: "We note that the 800 MHz band is particularly suited to such flexibility because 800 MHz PLMR and CMRS channels are interleaved, rather than grouped into separate bands." *B/ILT Order* at para. 109.

<sup>13</sup> AMTA Comments at page 11.

<sup>14</sup> API Comments at page 6.

that there will be significant benefits. For example, PCIA notes that existing B/ILT licensees need to “cooperate with CMRS providers to expand the geographic reach of their systems, or create other venture which will enhance their communications systems and capabilities.”<sup>15</sup> API urges the Commission to refrain from “reallocating” spectrum from private users, but appears willing to accept the Commission’s proposed safeguards for the spectrum (i.e., a holding period for new B/ILT licensees) before they can be assigned to commercial providers.<sup>16</sup>

As the Commission is aware, 800 and 900 MHz spectrum are both utilized for commercial services as well as the provision of private internal-only communications requirements. As the Ad Hoc Committee notes, the rules at 800 MHz and 900 MHz have been developed hand-in-hand and the regulatory requirements in both bands are nearly identical. The main difference in how the two bands have developed is that at 900 MHz the Commission did not previously permit intercategory-sharing, as it did at 800 MHz. Thus, there has been fewer commercial users of 900 MHz B/ILT band channels than the pervasive commercial use at 800 MHz. This has retarded the introduction of spectrally efficient, advanced digital services in the 900 MHz band that have been pioneered by commercial providers, who have the incentive to invest in advanced systems.<sup>17</sup> The flexibility for voluntary assignments and joint ventures with commercial

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<sup>15</sup> PCIA Comments at page 4.

<sup>16</sup> API Comments at page 7.

<sup>17</sup> AMTA Comments at page 10. DW Comments at page 4.

providers will result in increased spectrum efficiency, enhanced services and similar benefits for both commercial and private use.

As for the arguments that flexibility will cause spectrum scarcity and lack of options for 900 MHz B/ILT users to satisfy their communications needs, the proposed rule change will have no such effect. 900 MHz B/ILT spectrum has already been significantly licensed in the major metropolitan areas and the Commission has not proposed allowing commercial providers to access unlicensed spectrum. Thus, unlicensed 900 MHz spectrum will still be available for those private users seeking to acquire it. Further, as AMTA and DW argue, the recently auctioned Guard Band spectrum at 700 MHz offers an opportunity for both incumbent 800 and 900 MHz licensees (both private and commercial) as well as future users to use that alternative band to satisfy their communications needs.<sup>18</sup>

The proposed rule change will allow flexibility and voluntary transactions to occur -- it is not a "reallocation" of the B/ILT spectrum. An examination of the contrast between the Ad Hoc Committee's example of an incumbent B/ILT licensee with that of ITA's incumbent user is instructive. Ad Hoc provides an example of a 900 MHz B/ILT licensee who is willing to subscribe to another provider's commercial services, but is prevented because it cannot recover its capital costs unless it can potentially swap its spectrum for service.<sup>19</sup> In that situation, a willing seller and buyer exist and a beneficial secondary market

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<sup>18</sup> AMTA Comments at pages 12-13. DW Comments at page 5.

<sup>19</sup> AD Hoc Committee Comments at page 3.

transaction would occur, but for the Commission's current regulatory prohibitions, on these channels.

ITA's example of a user "in no way interested" in turning over its security and internal-communications needs at 900 MHz to commercial providers is also instructive.<sup>20</sup> Under the proposed rules, such an incumbent licensee would not be required to assign its spectrum to a commercial provider – the proposed rule simply permits such transactions on a purely voluntary basis. Where there is a willing buyer and a willing seller, transactions should be permitted to occur. The Commission's proposed rule change would allow that to happen.

Finally, LMMC and ITA argue that the Commission should wait to adopt rules at 900 MHz until it reviews how the rule changes have worked at 800 MHz.<sup>21</sup> Neither party gives an indication of how long the Commission must wait before making its determination or what objective criteria the Commission should apply to evaluate its recent grant of flexibility to 800 MHz B/ILT licensees to make informed, voluntary choices about their future communications services and spectrum use. There is no public interest or public policy benefit to delaying the proposed action as the opposition commenters identify no compelling rationale for doing so.

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<sup>20</sup> ITA Comments at page 11.

<sup>21</sup> LMMC Comments at pages 5-6. ITA Comments at page 11.



#### IV. CONCLUSION

As Motorola recognizes, "voluntary flexibility is a logical progression of the regulatory flexibility" recently given to 800 MHz B/ILT licensees.<sup>22</sup> The proposed rule change would make the 900 MHz rules consistent with rule changes recently adopted in the 800 MHz band. Given similar circumstances and the likelihood of similar benefits for both incumbents and commercial providers, the Commission should expeditiously adopt the proposed modifications and permit voluntary assignments between incumbent B/ILT licensees and commercial providers and the voluntary conversion of B/ILT licenses to commercial use.

Respectfully submitted,

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Dated: April 2, 2001

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<sup>22</sup>

Motorola Comments at page 9.

CERTIFICATE OF SERVICE

I, James B. Goldstein, hereby certify that on April 2, 2001, caused a copy of the attached Comments of Nextel Communications, Inc. to be served by first class mail to the following:

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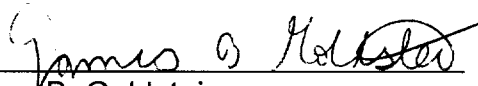
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